



## **ISSUES**

The issues are: (1) whether OWCP properly found that appellant received an overpayment of compensation in the amount of \$11,390.25 for which she was not at fault, during the period March 3 through October 12, 2018 because appellant was incorrectly paid wages based on actual earnings in employment when she should have been paid based on actual hours lost from work; and (2) whether it properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$300.00 from appellant's continuing compensation payments every 28 days.

## **FACTUAL HISTORY**

On February 18, 2016 appellant, then a 49-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she developed a left shoulder injury due to factors of her federal employment, including repetitive motion and heavy lifting over many years. She noted that she first became aware of her condition and realized its relation to her federal employment on December 16, 2015. OWCP assigned the claim File No. xxxxxx613 and accepted it for partial rotator cuff tear of the left shoulder and an authorized arthroscopic surgery was performed on May 11, 2016. Appellant resumed part-time modified work on August 3, 2016 working 5.5 hours per day modified duty and was entitled to compensation for the balance of each shift worked, equal to 2.5 hours per day. She requested 2.5 hours of wage-loss compensation based on her reduced schedule of her modified assignment for the period March 3 through July 20, 2018 and August 18 through October 12, 2018. OWCP paid wage-loss compensation for the period March 3 through October 12, 2018.<sup>4</sup>

Appellant filed several claims for compensation (Form CA-7). She filed CA-7 forms for the period March 3 through July 20, 2018, requesting 2.5 hours of wage-loss benefits for each day that her schedule was reduced due to her modified assignment. She also filed CA-7 forms for 50.21 hours of leave without pay (LWOP) for the period July 21 through August 3, 2018, 44.12 hours of LWOP for the period August 4 through 17, 2018, 25 hours of LWOP for the period August 18 through 31, 2018, 17.5 hours of LWOP for the period September 4 through 12, 2018, 17.5 hours of LWOP for the period September 15 through 28, 2018, and 50.67 hours of LWOP for the period September 29 through October 12, 2018.

In a manual adjustment form dated April 11, 2019, OWCP determined that appellant was paid incorrectly based on actual earnings in employment when she should have been paid based on actual hours lost from work. The employing establishment provided earnings for intermittent time lost from work for wages they paid for the entire period claimed based on a wage-earning

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<sup>4</sup> The record reflects that appellant subsequently filed a claim for an October 4, 2016 traumatic injury to the right shoulder while lifting a parcel at work. OWCP assigned that claim File No. xxxxxx329 and accepted it for right rotator cuff tear secondary to the traumatic incident. Appellant underwent an authorized surgery on the right shoulder on February 8, 2019. She was working a part-time modified schedule of 5.5 hours a shift at the time of this injury. After this injury, appellant returned to a modified part-time job and submitted claims for wage loss beginning March 3, 2018 under OWCP File No. xxxxxx329. OWCP paid partial wage-loss benefits for the right shoulder for the period of March 3 through June 15, 2018. Appellant was paid the balance of lost hours after deduction of actual worked hours for each shift receiving a total of 258.29 hours of wage loss under OWCP File No. xxxxxx329. Her claims have not been administratively combined.

capacity determination. OWCP paid the claims based on actual earnings, which was incorrect. Because she was a full-time employee appellant should have been paid based on the actual number of intermittent hours lost from work. For the period of March 3 through September 14, 2018 she was paid \$17,570.00, but should have been paid for 371 intermittent hours lost from work or \$7,290.19. Beginning September 15 through 28, 2018, appellant was paid \$1,145.00, but should have been paid \$343.13 for 17.5 intermittent hours lost from work for this period. From September 29 to October 12, 2018, she was paid \$1,302.00, but should have been paid \$993.45 for 50.67 intermittent hours lost for this period.

In a separate manual adjustment form dated April 11, 2019, OWCP prepared an overpayment calculation worksheet for the period March 3 through October 12, 2018, noting that appellant was paid \$20,017.00 when she should have been paid \$8,626.75. The total overpayment was determined to be \$11,390.25.

On April 26, 2019 OWCP issued a preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$11,390.25 had been created because appellant was paid incorrect wages based on actual earnings in employment when she should have been paid based on actual hours lost from work under OWCP File No. xxxxxx613. It determined that she was without fault in the creation of the overpayment. OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20) to determine a reasonable payment method, and advised her that she could request waiver of recovery of the overpayment. It further requested that she provide supporting financial documentation, including copies of income tax returns, bank account statements, bills, canceled checks, pay slips, and any other records which supported income and expenses. Additionally, OWCP further notified appellant that, within 30 days of the date of the letter, she could request a telephone conference, a final decision based on the written evidence, or a prerecoupment hearing.

In a narrative statement dated May 9, 2019, appellant disputed the preliminary overpayment determination asserting that she had a separate claim for an accepted right shoulder injury and she was advised by OWCP to file claims for compensation under both OWCP File numbers and that they would be combined. She further indicated that she only received one check for \$17,570.00.

On May 10, 2019 appellant completed an overpayment action request form. She disagreed that the overpayment occurred, and the amount of the overpayment, and contended that she was still owed compensation.

In a Form OWCP-20, appellant reported that her total monthly income included \$2,900.00 from OWCP. She reported expenses totaling \$3,250.00. Appellant noted supporting two sons who are age 25 and 28 respectively. She again noted that she had two separate claims that were accepted by OWCP for a left shoulder and right shoulder injury that were to be administratively combined into one master case file. Appellant reported filing claims for compensation every two weeks in both cases. She asserted that there was a misunderstanding regarding the overpayment because the claims examiner did not check both OWCP file numbers. Appellant did not submit supporting financial information.

The prerecoupment hearing was held on September 9, 2019. Appellant testified that she injured her left shoulder and then her right shoulder when she was working part time. She was claiming the rest of her shift as wage loss. Appellant further noted that she was not paid for an eight-month period. She confirmed that she was paid under separate claim numbers with different pay rates. Appellant felt she was due 1,024 hours of compensation and properly received a check for \$17,000.00. She testified that she understood that everything would be processed under a single claim number.

By decision dated November 20, 2019, OWCP finalized the overpayment determination, finding that appellant had received an overpayment of compensation in the amount of \$11,390.25 for the period March 3 through October 12, 2018, because she was paid incorrect wages based on actual earnings in employment when she should have been paid based on actual hours lost from work. It further noted that this method was incorrect in application because it failed to consider her schedule award and prior payments issued under OWCP File No. xxxxxx329.<sup>5</sup> OWCP found that appellant was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment because she did not provide all of the requested information regarding income, expenses, debts, and assets necessary to determine whether recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience. The hearing representative noted that appellant failed to provide supporting financial documentation. He further indicated that, absent complete and current documentation of appellant's expenses and assets, the evidence was insufficient to establish that recovery of the overpayment would defeat the purposes of FECA or be against equity and good conscience. OWCP required recovery of the overpayment by deducting \$300.00 every 28 days from her continuing compensation payments. It also ordered that OWCP File Nos. xxxxx613 and xxxxxx329 be administratively combined.

### **LEGAL PRECEDENT -- ISSUE 1**

Section 8102(a) of FECA provides that the United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of his or her federal employment.<sup>6</sup> Section 8116 limits the right of an employee to receive compensation. While an employee is receiving compensation, he or she may not receive salary, pay, or remuneration of any type from the United States.<sup>7</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that OWCP improperly determined that appellant received an overpayment of compensation in the amount of \$11,390.25 for the period March 3 through October 12, 2018.

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<sup>5</sup> The record reflects that appellant filed another claim for an October 4, 2016 traumatic injury to the right shoulder that was accepted for right rotator cuff tear secondary to the traumatic incident, under OWCP File No. xxxxxx329. Appellant underwent surgery on the right shoulder on February 8, 2019. Her claims have not been administratively combined.

<sup>6</sup> 5 U.S.C. § 8102(a).

<sup>7</sup> *Id.* at § 8116.

As noted above, the present claim, assigned OWCP File No. xxxxxx613, was accepted for partial rotator cuff tear of the left shoulder. Following a May 11, 2016 authorized arthroscopic surgery, appellant resumed part-time modified work on August 3, 2016. She was working 5.5 hours per day modified duty and claimed compensation for the balance of each shift worked, equal to 2.5 hours per day. On April 26, 2019 OWCP issued a preliminary overpayment determination, finding that an overpayment of compensation in the amount of \$11,390.25 had been created because appellant was paid incorrect wages based on actual earnings in employment when she should have been paid based on actual hours lost from work. It found her without fault in the creation of the overpayment, but required recovery of the overpayment by deducting \$300.00 from appellant's continuing compensation payments every 28 days. In the final overpayment decision dated November 20, 2019, OWCP indicated that appellant had also submitted claims for wage-loss compensation under File No. xxxxxx329 for the period March 3 through June 15, 2018 and was paid compensation for a total of 258.29 hours of wage loss in that claim. File No. xxxxxx329, however, has not been administratively combined with the present claim. It is, therefore, unclear whether, or to what extent, OWCP considered the disability compensation paid under OWCP File No. xxxxxx329 in their final overpayment determination. A claimant is entitled to an overpayment decision that clearly explains how the amount was calculated.<sup>8</sup>

OWCP's procedures provide that cases should be administratively combined when correct adjudication depends on cross-referencing between files and when two or more injuries occur to the same part of the body.<sup>9</sup> As correct payment of compensation benefits requires a review of both claims, for full and fair adjudication, OWCP should have administratively combined the above claims prior to finding an overpayment of compensation.

Accordingly, the Board finds that OWCP has not established fact of overpayment.<sup>10</sup>

### **CONCLUSION**

The Board finds that OWCP improperly found that appellant received an overpayment of compensation in the amount of \$11,390.25.

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<sup>8</sup> *R.B.*, Docket No. 20-0022 (issued October 28, 2020); *O.R.*, 59 ECAB 432 (2008).

<sup>9</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000).

<sup>10</sup> As OWCP has not established fact and amount of the overpayment, the issues of waiver and recovery are rendered moot. The Board notes that appellant also has a subsequent claim under OWCP File No. xxxxxx560, accepted for left and right ankle sprains. Appellant has filed a claim for compensation in that claim for disability from work during the period September 9 to November 23, 2017. On return of the case record, OWCP should consider administratively combining File Nos. xxxxxx560, xxxxxx329, and xxxxxx613.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 20, 2019 decision of the Office of Workers' Compensation Programs is reversed.

Issued: April 16, 2021  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board